

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

Tony Ervin LOPEZ, #71964-083,

Petitioner,

v.

CIVIL ACTION No. 2:18-cv-322

J. RAY ORMOND, Warden,
FCC Petersburg (Low),

And HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondents.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241 submitted by Petitioner Tony Ervin Lopez ("Lopez" or "Petitioner"), along with the required filing fee. (ECF No. 1, 7). Lopez alleges that the Federal Bureau of Prisons ("BOP") has failed to comply with the terms of his federal sentence. Lopez seeks an order from this court removing a detainer in favor of the Virginia Department of Corrections and directing the BOP to run a one-year state sentence concurrent with his present federal sentence. Petitioner argues that the BOP's failure to run the state and federal sentences concurrently violates the federal sentencing judge's express direction that the federal

sentence was to be concurrent to the prior-imposed state sentence.¹

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report of the Magistrate Judge was filed on June 18, 2019, recommending dismissal of the petition with prejudice. (ECF No. 27). By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the Magistrate Judge's Report and Recommendation and the time for filing objections has now expired.

Accordingly, the Court does hereby accept the findings and recommendations set forth in the report of the United States Magistrate Judge filed June 18, 2019, and it is, therefore **ORDERED** that Respondent Ormond's and Respondent Clarke's Motions to Dismiss (ECF Nos. 9, 23) be **GRANTED**, and that the petition (ECF No. 1) be **DENIED** and **DISMISSED** with prejudice.


Finding that the basis for dismissal of Petitioner's § 2241 petition is not debatable, and alternatively finding that

¹Lopez originally named J. Ray Ormond, Warden of the federal facility where Lopez is incarcerated, as the sole respondent in this action. After Ormond filed a Motion to Dismiss the Petition, or in the Alternative for Summary Judgment, (ECF No. 9), this court ordered that Harold Clarke (''Clarke''), Director of the Virginia Department of Corrections, be joined as a respondent and the Petition was served on him. March 1, 2019 Order (ECF No. 19). Respondent Clarke thereafter filed a Motion to Dismiss the Petition, or in the Alternative for Summary Judgment. (ECF No. 23).

Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); Miller-El v. Cockrell, 537 U.S. 322, 335-38 (2003); Slack v. McDaniel, 529 U.S. 473, 483-85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within sixty (60) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall mail a copy of this Final Order to Petitioner at the address on file with the court and provide an electronic copy of the Final order to counsel of record for each Respondent.

/s/ 
MARK S. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

July 24, 2019